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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 46

CHARLES A. MEEKER and his wife, SYBIL MEEKER,
Petitioners,

VERSUS

AMBASSADOR OIL CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

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December, 1963.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-8750

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Respondent presents its petition for a rehearing in this Court and in support thereof shows:

GROUNDS FOR REHEARING

The reversal of the judgment of the Court of Appeals overlooks the fact that the *undisputed facts* show that petitioners accepted the benefits of a compromise and settlement which was made for their benefit.

There was a bona fide dispute as to whether the thirty-day lease or the Ambassador lease was the effective oil and gas lease. In settlement of this dispute, Domestic Oil Cor-

poration (the party in charge of the drilling operations for the group of owners to which petitioners belonged) acquired the Ambassador lease.

The Ambassador lease was acquired for the benefit of the drilling group. Mr. Edward E. Brook, who was president of Domestic Oil Corporation so testified (R. 36 and 37). Mr. Meeker was informed of this fact and so testified (R. 40-41). The opinion below so shows (R. 66).

Either the Ambassador lease was an effective lease, or the thirty-day lease was an effective lease. Both could not simultaneously exist. By taking an assignment of an interest in the Ambassador lease, petitioners acquired an interest in something in which they otherwise had no ownership or interest. In other words they accepted the fruits of a settlement. A productive oil well was completed *after* the settlement of the dispute had been agreed upon.

Insofar as petitioners are concerned this settlement was made by an agent without authority; but with full knowledge of all the facts, the petitioners took the benefits of the settlement. As a matter of law they could not both affirm and deny. They could not take the benefits and deny the burdens of the settlement.

That petitioners accepted the benefits is proven by an undisputed fact; the assignment to them (R. 60). That they had knowledge is proved by Meeker's testimony (R. 40-41).

Restatement, Second, Agency, Section 98 is as follows:

> "The receipt by a purported principal, with knowledge of the facts, of something to which he would not

be entitled unless an act purported to be done for him were affirmed, and to which he makes no claim except through such act, constitutes an affirmance unless at the time of such receipt he repudiates the act. If he repudiates the act, his receipt of benefits constitutes an affirmance at the election *of the other party* to the transaction." (Emphasis ours.)

Under Comment a. (p. 253) this statement is found:

"Even if he disclaims responsibility for the act of the purported agent, however, he becomes subject to liability to the person from whom the things were obtained to the same extent as if he had consented to become a party to the transaction, provided that he receives its proceeds with knowledge of the facts."

The rule in Oklahoma is in accord. A fairly recent expression by the Oklahoma Supreme Court appears in *Yellow Jacket Boat Company, Inc.* v. *Little Glasses Corporation,* 338 P.2d 1105, 1107 (1959), wherein the Court said:

"For said reason our opinion in No. 38,298 to the effect that where one voluntarily and with knowledge of the facts accepts the benefits of an act purporting to have been done on his account, by one claiming to act as his agent, though without authority, he thereby ratifies such act and makes it his own as fully as though he had authorized it in the beginning *and he may not ordinarily take the benefits and reject the burdens, but must either accept them or reject them as a whole, applies here.*" (Emphasis ours.)

In *D. W. L. Inc.* v. *Goodner-Van Engineering Company,* 373 P.2d 38, 42 (1962), the Oklahoma Court said:

"The ratification by acceptance of fruits flowing from a transaction made by a person whose authority is

denied constitutes a form of estoppel whose application is not dependent on reliance by one party upon the represention and conduct of another, *nor on the intent of the principal to ratify.* Where an alleged principal claims that a person who negotiated a business deal was not in fact his agent at all, but was merely a volunteer, a self-constituted agent, or an agent for another, he with nevertheless be held bound by whatever obligations or liabilities were assumed by his pretended agent in consummating the transaction, if such principal insists on retaining the fruits of the unauthorized transaction. 15 O.S. 1961, §§ 70 and 75 provide respectively:

> 'Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.'
>
> 'A voluntary acceptance of the ' enefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known, or ought to be known to the person accepting.'

"See also, Okmulgee Coal Co. v. Hinton, et al., 95 Okl. 92, 218 P. 319, 322; Negim & Co. v. Harp et al., 98 Okl. 261, 225 P. 347; and First Nat. Bank of Muskogee v. Clark, 93 Okl. 23, 219 P. 370. In the last cited case it is held:

> 'Although a party may not have directly authorized an act which was performed, yet, where such party accepts the benefits of the act, it amounts to a ratification, and the party so ratifying the action taken accepts the burdens along with the benefits to be derived.'

"See also, 2 C.J.S. Agency §§ 49 and 66." (Emphasis ours.)

We believe it is quite clear that under the law generally, and under the Oklahoma law particularly, the act of the petitioners in accepting the assignment, ratified the compromise and settlement which Domestic had made with respondent.

The Oklahoma rule has been recognized by the Court of Appeals for the 10th Circuit in *Wolfe* v. *Shell Petroleum Corporation*, 83 F.2d 438, *cert. denied* 299 U.S. 553; *Wolfe* v. *Texas Co.*, 83 F.2d 425.

In *Crane Co.* v. *James McHugh Sons*, 108 F.2d 55 (C.C. 10th, 1939), at page 59 the Court said:

> "One who, with knowledge of the material facts concerning an act done by one assuming to act as his agent without authority, voluntarily accepts the benefits flowing therefrom, thereby ratifies the act and makes it his own as though he had authorized it from the beginning."

Again in *Knight* v. *Yoakam*, 338 P.2d 1075 (Okla. 1959), the Court reiterates the rule that by accepting the benefits of an unauthorized act of an agent, the principal ratifies the agent's act.

During the oral argument of this case, Mr. Justice Black inquired of counsel what the grounds were for the alleged estoppel. The cases cited hereinabove belatedly answer that inquiry, and show that the Oklahoma Supreme Court has given vigorous and complete recognition to Title 15, O.S.A., Sec. 75, cited at page 19 of respondent's brief. Furthermore, the cases show that the ratification does not rest in true estoppel. In *D. W. L. Inc.* v. *Goodner*,

supra, the Court says: "The ratification by acceptance of the fruits * * * constitutes a form of estoppel whose application is not dependent on reliance by the party upon the representation and conduct of another, nor on the intent of the principal to ratify."

On the undisputed facts we submit that the trial court would never have submitted this case to the jury, and that the denial of a jury trial did not constitute a denial of a *real right* under the circumstances of this case. We submit that the disposal of this case in this Court should be determined in accordance with the philosophy of 28 U.S.C. 2111.

We submit that the denial of a jury trial, has not accomplished an injustice in this case; we submit that the case is ripe for summary judgment, and that this Court should not protract the litigation by refusing to pronounce judgment. We submit that this Court can say that upon the facts as pleaded by petitioners, petitioners would have been entitled to a jury trial; but that on the *admitted facts proven*, there was no case to submit to a jury.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that upon further consideration, the judgment below should either be

affirmed, or remanded with instructions to determine whether there was in fact, any question to submit to a jury.

Respectfully submitted,

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December, 1963.

CERTIFICATE OF COUNSEL

I, C. Harold Thweatt, hereby certify that the foregoing petition for a rehearing is presented in good faith and not for delay.

C. HAROLD THWEATT,
Counsel for Respondent.